

STATE OF OREGON



COVER PAGE

OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

MORTGAGE LENDING PROGRAM

Request for Applications ("RFA")

RFA #7385

Date of Issue: January 31, 2023

Application Acceptance Date and Time Begins: February 7, 2023, at
(3:00 p.m.) PST

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LIST OF ATTACHMENTS

Attachment A – Application Packet

Attachment B – Sample Agreement

Attachment C – Affidavit of Trade Secret

Attachment D - Key Personnel

(Attachments are posted as separate documents to OHCS' Procurement website)

SECTION 1: GENERAL INFORMATION

1.1 INTRODUCTION

The State of Oregon ("State"), acting by and through the Department of Housing and Community Services, ("Department" or "OHCS"), is issuing this Request for Applications ("RFA") to identify a pool of Mortgage Lenders ("Lenders") seeking to deliver Mortgages (as defined below) to the Department. Mortgages will be originated and closed by Lenders then delivered to an OHCS-approved Servicer.

Mortgages will be Ginnie Mae (FHA-insured, VA guaranteed, USDA-RD guaranteed, Section 184 guaranteed) or Conventional Mortgages (as defined below) often in combination with a Second Lien Mortgage. Conventional Mortgages conform to the current Fannie Mae Seller/Servicer Guide (the "Fannie Mae Guide") and/or the Freddie Mac Seller/Servicer Guide (the "Freddie Mac Guide"). Second Lien Mortgages can be either an Amortizing Second Mortgage Loan or a Silent Second Mortgage with no scheduled payments or interest due.

Additional details on the scope of services are included in the Scope of Work section.

Anticipated Award: Department anticipates the award of up to one hundred (100) agreements from this RFA. Department desires geographic coverage throughout the State of Oregon. Department reserves the right to select the number of Lenders to meet the business need of the Department. The number of Lenders who offer Department programs within certain counties may be limited.

Agreement Term: Successful Applicant(s) will be invited to enter into an agreement ("Agreement") with the Department. The Agreement term will be ten (10) years, subject to (i) Lender's annual payment of all fees required under the Program Documents or otherwise required by the Department, and (ii) Lender's annual submission of such documents as requested by the Department to confirm Lender's continued qualifications to participate in the Program. Failure by Lender to comply with the foregoing obligations will constitute grounds for termination of the Agreement by the Department.

The initial Agreement term will be one year. However, the Agreement will automatically renew for additional successive 1-year renewal periods until terminated by either party in accordance with the terms of the Agreement, provided that the Applicant must annually submit financial statements and other information as required by the Department to verify that the Applicant continues to satisfy all of the Department's requirements under its lending programs. If the Applicant fails to submit such items, or is no longer in compliance with the Department's requirements, the Department may terminate the Agreement immediately upon notice to the Applicant.

1.2 SCHEDULE

Event	Date	Time
Application Acceptance Date – OHCS will begin accepting applications on February 6, 2023	February 7, 2023	3:00PM, PST
Pre-Application Webinar	February 6, 2023	
RFA Protest Period Ends	Schedule defined under OAR 813- 005-0025	
Closing/Application Period Expiration	January 31, 2028	
Reservation Notice (approx.)	On a rolling basis	

The table above represents a tentative schedule of events. All times are listed in Pacific Time. All dates listed are subject to change.

1.3 SINGLE POINT OF CONTACT (SPC)

The SPC for this RFA is identified on the Cover Page, along with the SPC's contact information. Applicant shall direct all communications related to any provision of the RFA only to the SPC, whether about the technical requirements of the RFA, contractual requirements, the RFA process, or any other provision.

1.4 DEFINITION OF TERMS

"Amortizing Second Mortgage Loan" means a mortgage loan in second lien position that has an interest rate and regular monthly payments over a period of time.

"Conventional Mortgage" means a mortgage loan that meets either Fannie Mae or Freddie Mac guidelines.

"Fannie Mae" or "FNMA" means Federal National Mortgage Association.

"FHA" means HUD's Federal Housing Authority.

"Freddie Mac" or "FHLMC" means Federal National Home Loan Mortgage Corp.

"Ginnie Mae" or "GNMA" means Government National Mortgage Association.

"GSE" means Government Sponsored Enterprise. In this document GSE refers to FNMA, FHLMC and GNMA.

"Lending Programs" means the Department's mortgage lending programs

"Mortgage Lender" means lending institutions licensed by the state of Oregon to originate mortgage loans.

“Mortgage Loan” or “Mortgage” means a debt instrument, secured by specified real property.

“PIH” means the Office of Public and Indian Housing.

“RD” or “USDA-RD” means the United States Department of Agriculture’s Department of Rural Development.

“Second Lien Mortgage Loan” means a mortgage made and acquired pursuant to the Second Lien Mortgage Product Manual that is in second lien position.

“Servicer” means an organization approved by OHCS to provide purchasing, pooling, selling and servicing of mortgage loans on behalf of OHCS.

“Silent Second Mortgage” means a mortgage loan in second lien position that has no payment or interest obligations.

“VA” means United States Department of Veteran’s Affairs.

SECTION 2: AUTHORITY, OVERVIEW, AND SCOPE

2.1 AUTHORITY AND METHOD

Department is issuing this RFA pursuant to its authority under ORS 279A.050(6)(g), ORS chapters 456 and 458, OAR chapter 813, divisions 5 and 6, as well as other applicable statutes and rules.

Department is using the Competitive Procurement Procedures, pursuant to OAR 813 Divisions 5 and 6. Department may use a combination of the methods for Competitive Procurement Procedures, including optional procedures: a) Competitive Range and b) Interviews.

2.2 DEPARTMENT OVERVIEW AND RFA PURPOSE

2.2.1 Department Overview and Background

Department is Oregon’s affordable housing finance department and community services program administrator. Department provides financial and program support to create and preserve quality, affordable housing for Oregonians of lower and moderate income. Department administers federal and State programs that support antipoverty, homelessness, energy assistance and community services.

Department’s mission: “Provide leadership that enables Oregonians to gain housing, become self-sufficient, and achieve prosperity.”

The Homeownership Section is dedicated to assisting low to moderate income families by partnering with Homeownership Centers across Oregon. In addition, the Oregon Bond Residential Loan Program assists first time homebuyers with competitive interest rate mortgage loans to help Oregonians purchase their first home. With the use of mortgage revenue bonds, these loans increase first time homebuyer’s purchasing power. Through the Homeownership Assistance Program (“HOAP” or the “Program”), the Department offers

funding assistance to Homeownership Centers to provide services to Oregonians looking for financial counseling, first time homebuyer education, down payment assistance and foreclosure counseling. These programs benefit homebuyers with low to moderate incomes who might not otherwise have access to homeownership options and traditional mortgage services. Oregon Homeownership Stabilization Initiative (“OHSI”) administers foreclosure prevention programs through the Oregon Hardest Hit Fund

In addition to the programs above, the manufactured housing team develops and implements programs to create and sustain homeownership with manufactured homes. This team identifies creative solutions to expand housing options by creating and preserving manufactured home parks, replacing or improving aging manufactured homes, and offering mortgage loans for qualified buyers. The Manufactured and Marina Community Resource Center (“MMCRC”) provides services and information to residents and landlords of manufactured dwelling parks and marina communities to promote cooperative community relationships and positive alternatives to the court system. The confidential, neutral and voluntary services provide assistance in resolving disputes by promoting open communication and a positive environment.

2.2.2 RFA Purpose

In an effort to meet affordable housing needs across the state, the Department has developed innovative lending programs (Lending Programs), established strategic partnerships, and incorporated successful marketing programs to deliver targeted, goal-oriented homeownership assistance.

Since 1977, the Department has operated a whole-loan Mortgage Revenue Bond homeownership program whereby the Department issues tax-exempt bonds and uses the proceeds to purchase mortgage loans. This program is currently bifurcated to offer closing cost assistance of up to 3%, or no-assistance with a lower interest rate (additional program details are available at <https://www.oregon.gov/ohcs/homeownership/pages/homebuying-how-it-works.aspx>).

In order to complement its existing whole-loan Mortgage Revenue Bond homeownership program, the Department is establishing the Flex Lending Program, a program not constrained by tax-exempt bond limitations thereby increasing access for Oregonians seeking to become homeowners as well as offering the option of down payment assistance.

The successful Applicant(s) for this RFA will become a lender (“Lender”) approved to engage with the Department for the reservation and subsequent purchase of Mortgages under the Department’s lending programs.

2.2.3 SCOPE OF WORK

Lenders must perform the following services pursuant to the Agreement (the “Services”):

- **Originate:**
 - Originate Mortgages - Take Mortgage Applications, qualify borrowers, reserve funds with the Department, close and deliver Mortgages(s) to the Department or

its Servicer(s) for purchase.

- Underwriting - Underwrite, decision and document mortgages meeting Government Sponsored Entities (GSE), Servicer and Department guidelines and requirements
- Compliance - Adhere to all compliance regulations
- Reservations/Locks – Reserving or Locking funds with the Department
- Updates/Changes - Work with and adjust activities to support changes in the origination and funding practices required by the Department and its Servicer(s).
- Delivery - Deliver mortgages to the Servicer(s) and work with the Department and Servicer(s) to meet purchasing conditions on a daily basis under the Program in accordance with the Program documents on a servicing-released basis.
- Production - Minimum annual production of 12 first Mortgage files is required.
- **Licenses:**
 - Oregon - Maintain necessary license(s) and registrations to conduct business in the state of Oregon
 - NMLS Co. - Maintain a valid NMLS ID or equivalent.
 - NMLS Loan Officer - Ensure origination staff maintains valid NMLS Licensing or equivalent.
- **Approvals/Delegation:**
 - Department and Servicer(s) - Be approved and in good standing with the Department and its Servicer(s).
 - GSE's - Be an approved seller/servicer with the appropriate GSE (FNMA, FHLMC or GNMA (GNMA to include FHA, PIH, USDA-RD and/or VA as applicable). Be approved to originate Mortgages, and delegated to underwrite and close such Mortgages.
 - Private Mortgage Insurance – Delegated to underwrite private mortgage insurance from mortgage insurance provider(s).
- **Liquidity/Warehousing:**
 - Warehouseline(s) – Fund Mortgage Loans using Lender's own funds or funding facilities.
 - Liquidity - Maintain liquidity in the form of cash or credit facility available to fund and warehouse Mortgages until purchased by the Servicer or re-purchase ineligible Mortgages.
- **Servicing** - Service Mortgages on an interim basis until purchased.
- **Post-Closing/Trailing Documentation**
 - Assist Department and/or Servicer(s) in post-closing inquiries and trailing document gathering.
- **Re-Purchase** – Repurchase ineligible Mortgages as required by the Department or Servicer(s).
- **Technology** - The software system used must meet the minimum-security standards required by the state of Oregon, Statewide Information Security Standards dated March 2017(Appendix A).

- **Program**

- Stay informed of Program announcements and comply with all Program documents.
- Respond to inquiries and requests from Department and/or Servicer within 24 hours or one business day of receipt, whichever period of time is greater.
- Statewide Housing Plan – Assist the Department in attaining its Statewide Housing Plan goals where possible. Those priorities include equity and racial justice, homeownership and rural community housing.

SECTION 3: APPLICANT & SUBMISSION REQUIREMENTS

3.1 MINIMUM APPLICANT REQUIREMENTS

- **Office(s):** Maintain one or more offices in Oregon or within 50 miles of the Oregon border, open to the public, fully staffed with experienced personnel who make purchase money Mortgages for owner-occupied homes located in Oregon. The staff originating and processing mortgages under the Department's Lending Programs must be located in an office in Oregon or within 50 miles of Oregon's border.
- **Licensing:** Organization and loan officers must be licensed and approved to conduct business in the state of Oregon.
- **Approvals:** Organization must be an approved seller/servicer of the GSE and Housing and Urban Development (HUD) Department for the loans presented to OHCS.
- **Funding:** Organization must possess the means to close and fund Mortgages.
- **Homebuyer Education:** Homebuyer education from a Department-approved homeownership center counselor is required for each homebuyer. A list of homeownership centers is available on OHCS' website.
- **Fees:** Lenders applying to become an Approved Lender will pay a non-refundable application fee of \$250.00 upon initial application and annually thereafter in connection with each renewal of the Agreement term.
- **Personnel:** Each of organization's following Key Personnel (as listed on Attachment D) must have a minimum of 5 years of experience in the industry.
 - Ownership (greater than 10%)
 - President/Chief Executive Officer
 - Chief Financial Officer
 - Chief Legal Officer
 - Senior Manager overseeing Underwriting Management
- **Conflicts of Interest:** Identify any conflict of interest that may arise as a result of business activities or ventures by your firm and associates of your firm, employees, or subcontractors as a result of any individual's status as a member of the board of directors of any organization likely to interact with OHCS.

3.2 SUBMISSION REQUIREMENTS

3.2.1 Application Submission Requirements

To be considered for evaluation under this RFA, Applicant must complete and sign all sections of the Application and provide all attachments complete with signatures (as further detailed in the Application Submission Requirements section below):

Applicant shall submit one (1) electronic copy of its Application to OHCS.Contracts@hcs.oregon.gov as an attachment in PDF format. Applications must be received by the Agency by the Closing Date/Time specified in the Schedule set forth in Section 1.2 of this RFA (the “Closing”). Please reference RFA #7385 in the subject line of all email communication.

In addition, if Applicant believes any of its Application is exempt from disclosure under Oregon Public Records Law (ORS 192.311 through 192.478) as a trade secret, Applicant shall complete and submit the Affidavit of Trade Secret (Attachment C) and a redacted electronic version of its Application, clearly identified as the redacted version.

3.2.2 Authorized Representative

A representative authorized to bind the Applicant to the requirements of this RFA shall sign the Application. Failure of the authorized representative to sign the Application may subject the Application to rejection by Department.

SECTION 4: SOLICITATION PROCESS

4.1 PUBLIC NOTICE

The RFA, including all Addenda and attachments, is published on the Department’s procurement website at <https://www.oregon.gov/ohcs/procurement/Pages/procurement-opportunities.aspx>. RFA documents will not be mailed to prospective Applicants.

Department will advertise all Addenda, if any, on Department’s procurement website. Prospective Applicant is solely responsible for checking Department’s procurement website to determine whether or not any Addenda have been issued. Addenda are incorporated into the RFA by this reference.

4.2 QUESTIONS / REQUESTS FOR CLARIFICATIONS

All inquiries, whether relating to the RFA process, administration, deadlines or method of award, or to the intent or technical aspects of the RFA must:

- Be delivered to the SPC via email at OHCS.Contracts@hcs.oregon.gov;
- Reference the RFA number;
- Identify Applicant’s name and contact information; and
- Refer to the specific area of the RFA being questioned (i.e. page, section and paragraph number).

4.3 SOLICITATION PROTESTS

4.3.1 Protests to RFA

Within 14 days of the Application Acceptance Date specified in the Schedule set forth in Section 1.2 ("Application Acceptance Date") prospective Applicant may submit a written protest of anything contained in this RFA, including but not limited to, the RFA process, Specifications, Scope of Work, and the proposed Sample Agreement (Attachment B). This is prospective Applicant's only opportunity to protest the provisions of the RFA, except that Applicant may protest Addenda as provided below.

4.3.2 Protests to Addenda

Prospective Applicant may submit a written protest of anything contained in an Addendum. Protests to Addenda, if issued, must be received by the Department by the later of (i) 5:00 p.m. Pacific Time of the second Business Day following the Department's issuance of the Addendum, (ii) the last day allowed for protests relating to the RFA as specified above in Section 4.3.1 or (iii) the date/time specified in the Addendum, or they will not be considered. Protests of matters not added or modified by the applicable Addendum will not be considered.

4.3.3 Requirements for Protests

All Protests must:

- Comply with the procedure under OAR 813-005-0025;
- Be delivered to the SPC via email;
- Reference the RFA number;
- Identify prospective Applicant's name and contact information;
- Be sent by an authorized representative;
- State the reason for the protest, including:
 - the grounds that demonstrate how the procurement process is contrary to law, unnecessarily restrictive, legally flawed, or improperly specifies a brand name; and
 - evidence or documentation that supports the grounds on which the protest is based; and
- State the proposed changes to the RFA provisions or other relief sought;

Protests to the RFA must be received by the Department by the due date and time identified in the Schedule in Section 1.2. Protests to Addenda must be received by the Department by the due date identified in the applicable Addendum.

4.3.4 Protest Response

Department will endeavor to respond to all protests in a timely manner while giving due consideration to the nature of the protests. Protests that do not comply with OAR 813-005-0025 may not be considered.

4.4 APPLICATION DELIVERY OPTIONS

Applicant is solely responsible for ensuring its Application is received by the SPC in accordance with the RFA requirements. Department is not responsible for any transmission errors (electronic or otherwise) or delays or mistaken delivery. Applications submitted by any means not authorized in this RFA may be rejected.

4.5 APPLICATION MODIFICATION OR WITHDRAWAL

If an Applicant wishes to make modifications to a submitted Application, it must submit its modification in the authorized method listed Section 3.2 (Submission Requirements). To be effective, the notice and modification must include the RFA number and be submitted to and received by the SPC within ten days of the initial Application submission.

If an Applicant wishes to withdraw a submitted Application, it must submit a written notice signed by an authorized representative of its intent to withdraw to the SPC via email or hard copy prior to Closing in accordance with OAR 137-047-0440. To be effective the notice must include the RFA number and be received by the SPC within ten days of the initial Application submission.

4.6 APPLICATION DUE

An Application (including all required submittal items) must be received by the SPC prior to Closing. All Application modifications or withdrawals must be received within ten days of the initial Application submission.

An Application received after Closing is considered LATE and will NOT be accepted for evaluation. A late Application will be returned to the Applicant or destroyed in Department's sole discretion.

4.7 PUBLIC OPENING

There will not be a public opening for this RFA. Except as required by applicable law, applications received will not be available for inspection until after the evaluation process has been completed and the Applicant has been selected to enter into an Agreement.

APPLICATION REJECTION

Only complete Applications will be evaluated. Additionally, the Department may reject an Application for any of the following reasons:

- Applicant fails to substantially comply with all prescribed RFA procedures and requirements, including but not limited to the requirement that Applicant's authorized representative sign the Application.
- Applicant has liquidated and delinquent debt owed to the State or any department of the State.
- Applicant fails to meet any of the requirements set forth in this RFA
- Applicant makes any contact regarding this RFA with State representatives such as State employees or officials other than the SPC or those the SPC authorizes, or inappropriate contact with the SPC.
- Applicant attempts to influence a member of the Evaluation Committee.

- Application is conditioned on the Department's acceptance of any other terms and conditions or rights to negotiate any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFA.

4.8 EVALUATION PROCESS

Application must address each of the items listed in this Section 4.8 and all other requirements set forth in this RFA.

4.8.1 Responsiveness and Responsibility Determination

An Application received prior to Closing will be reviewed to determine if it is Responsive to all RFA requirements including compliance with Section 3.2 (Submission Requirements). If the Application is unclear, the SPC may request clarification from Applicant. Applicant must respond within three (3) working days of the date an email has been sent from Department. However, clarifications may not be used to rehabilitate a non-Responsive Application. If the SPC finds the Application non-Responsive, the Application may be rejected. However, the Department may waive mistakes in accordance with OAR chapter 813, divisions 5 and 6.

The Department may use its discretionary action in accordance with OAR 813-006-0040.

The Department will determine if an apparent successful Applicant is Responsible prior to award and execution of an Agreement. At any time prior to award, the Department may reject an Applicant found to be not Responsible.

4.8.2 Evaluation Overview

Members of an Evaluation Committee will independently evaluate each Application meeting all responsiveness requirements. The size of the Evaluation Committee will be determined by the Department. The composition of the Evaluation Committee may change and the Department may have additional or fewer evaluators. Evaluator(s) will assign a PASS or FAIL determination for each evaluation criterion based on the categories described below, and the Applicant must describe how it meets any other requirements that may be specified in this RFA.

SPC may request further clarification and reserves the right to request additional information to assist the Evaluation Committee in gaining additional understanding of an Application. The Department may conduct additional discussions and negotiations with interested Applicants who submit Applications found to be reasonably likely to be selected.

The Department may award an Agreement to an Applicant whose Application is advantageous to the Department. Department reserves the right to award Agreements to the Applicants who best meet the requirements of this RFA.

4.8.3 Evaluation Criteria (PASS/FAIL)

All Applications will be evaluated on a pass/fail basis. Each Applicant must meet all of the minimum qualifications listed in 3.2.1 and include all documentation required

in 3.2.1 to receive a “PASS” and become an Eligible Applicant. Applicants who do not receive a PASS on all qualifications will not move forward in the process.

SECTION 5: AWARD AND NEGOTIATION

5.1 AWARD NOTIFICATION PROCESS

5.1.1 Award Consideration

Department may enter into an Agreement with each successful Eligible Applicant in accordance with the process described in Section 4.

5.1.2 Intent to Award Notice

Department will notify Applicant(s) in writing by issuing an Intent to Award notice that Department intends to award an Agreement to the selected Applicant(s) subject to successful negotiation of any negotiable provisions.

5.2 INTENT TO AWARD PROTEST

5.2.1 Protest Submission

An affected Applicant may submit a written protest in accordance with procedures and timeline outlined in OAR 813-005-0025.

5.2.2 Response to Protest

Department will address all timely submitted protests within a reasonable time and will issue a written decision to the respective Applicant. Protests that do not include the required information may not be considered by Department.

5.3 APPARENT SUCCESSFUL APPLICANT SUBMISSION REQUIREMENTS

Each Applicant who is selected for an Award under this RFA will be required to submit additional information and comply with the following:

5.3.1 Insurance

Prior to execution of an Agreement, Applicant shall secure and demonstrate to Department proof of insurance as required in this RFA or as otherwise negotiated in the sole discretion of the Department. Insurance Requirements are found in Exhibit B of Attachment B.

5.3.2 Taxpayer Identification Number

Applicant shall provide its Taxpayer Identification Number (“TIN”) and backup withholding status on a completed W-9 form when requested by Department or when the backup withholding status or any other relevant information of Applicant has changed since the last submitted W-9 form, if any.

5.3.3 Business Registry

If selected for Award, Applicant shall be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the Agreement. Visit <http://sos.oregon.gov/business/pages/register.aspx> for Oregon Business Registry information.

5.4 AGREEMENT NEGOTIATION

5.4.1 Negotiation

After selection of a successful Applicant, Department may enter into Agreement negotiations with the successful Applicant. By submitting an Application, Applicant agrees to comply with the requirements of the RFA, including the terms and conditions of the Sample Agreement (Attachment B), with the exception of those terms expressly reserved by the Department for negotiation.

Applicant shall review the attached Sample Agreement (Attachment B) and note exceptions to the extent permitted by this RFA.

Applicant must submit those exceptions to the Department on or before the due date for Questions / Requests for Clarification set forth in Section 1.2 (Schedule). Unless the Department agrees to modify any of the terms and conditions, Department intends to enter into Agreements with the successful Applicants substantially in the form set forth in the Sample Agreement (Attachment B).

It may be possible to negotiate some provisions of the Sample Agreement (Attachment B); however, the Department is not required to make any changes and many provisions cannot be changed. Applicant is cautioned that the State of Oregon believes modifications to the standard provisions constitute increased risk and increased cost to the State. Therefore, Department will consider the scope of requested exceptions in the evaluation of Applications.

Any subsequent negotiated changes are subject to prior approval of the Oregon Department of Justice.

Department is unable to negotiate the items listed below:

- Choice of law
- Choice of venue
- Constitutional requirements
- Requirements of applicable federal and State law

SECTION 6: ADDITIONAL INFORMATION

6.1 GOVERNING LAWS AND REGULATIONS

This RFA is governed by and to be construed and enforced in accordance with the laws of the State of Oregon, notwithstanding its conflict of law principles. Venue for any judicial action relating to this RFA, evaluation and award is the Circuit Court of Marion County for the State of Oregon; provided, however, if a proceeding must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section 6.1 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental

immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any claim or consent to the jurisdiction of any court.

6.2 PUBLIC INFORMATION

All Applications are public records and are subject to public inspection. Application of the Oregon Public Records Law ("PRL") will determine whether any information is exempt from disclosure.

The PRL may provide confidentiality protection to some or all of your Application, at least on a limited basis.

- A. The PRL exempts trade secrets from disclosure only if they qualify as bona fide trade secrets, and the exemption in ORS 192.345(2) from disclosure applies only "unless the public interest requires disclosure in the particular instance". Therefore, non-disclosure of a document or any portion of a document submitted as part of an Application may depend upon official or judicial determination made pursuant to Oregon law. Please identify in your Application any materials that you deem to constitute trade secrets. Failure to do so may be deemed by Department as a waiver by Applicant of this disclosure exemption.
- B. The PRL exempts certain records, communications and information obtained by Department, including through this RFA. Please refer to the PRL for the specifics of these exemptions.
- C. The PRL, in ORS 192.355(4), allows information submitted to a public body in confidence and not otherwise required by law to be submitted to that body, "where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure." In a competitive solicitation such as this RFA, the terms of individual Applications manifestly must be deemed and treated as confidential (at least through the point in time when Notice of Intent to Award is made with respect to this RFA, and perhaps longer) if (i) the competitive purposes of the RFA are to be realized, (ii) the confidential distinguishing aspects of Applications are to be protected, and (iii) the Department's interest in maximizing the number and innovative nature of Applications is to be achieved. If an Applicant identifies that its Application is being submitted in confidence pursuant to ORS 192.355(4) by so stating in writing on its Application through Attachment C, (Affidavit of Trade Secret) the Department hereby obliges itself in good faith not to disclose the Application to the public consistent with the terms of ORS 192.355(4) - at least through the point in time when Notice of Intent to Award is provided under this RFA, and perhaps longer if the Department determines that such additional confidentiality serves the purposes of Department programs, the public, or the purposes of this RFA.

All Applications submitted in response to this RFA become the property of the Department. By submitting an Application in response to this RFA, Applicant grants the State a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Application solely for the purpose of evaluating the Application, negotiating an Agreement, if awarded to Applicant, or as otherwise needed to administer the RFA process, and to fulfill obligations under the PRL (ORS 192.311 through 192.478). Applications, including supporting materials, will not be returned to the Applicant

except in cases where the Application is submitted late and rejected by the Department.

6.3 CANCELLATION OF RFA; REJECTION OF APPLICATION; NO DAMAGES.

Department may reject any or all Applications in-whole or in-part, or may cancel this RFA at any time when the rejection or cancellation is in the best interest of the State or Department, as determined by Department. Neither the State nor Department is liable to any Applicant for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFA or any award, or rejection of any Application.

6.4 COST OF SUBMITTING AN APPLICATION

Applicant must pay all costs relating to its Application, including, but not limited to, the costs to prepare and submit the Application, costs of samples and other supporting materials, costs to participate in demonstrations, or costs associated with protests.

6.5 CHECKLIST DISCLAIMER

Any checklists that may be contained in this RFA are provided only as a courtesy to prospective Applicant. Department makes no representation as to the completeness or accuracy of any checklist. Prospective Applicant is solely responsible for reviewing and understanding the RFA and complying with all the requirements of this RFA, whether listed in a checklist or not. Neither the State nor the Department is liable for any claims, or subject to any defenses, asserted by Applicant based upon, resulting from, or related to, Applicant's failure to comprehend or comply with all requirements of this RFA.